

33226

ECS FILE: IGA-44-02

PROJECT: EAC-I-10-3(190)

SECTION: INNER LOOP DRAINAGE TUNNELS

TRACS #

HD11601C

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF PHOENIX

NO. 9154
FILED WITH SECRETARY OF STATE
Date Filed 3-22-84
<i>Rose Bradford</i> Secretary of State

THIS AGREEMENT entered into this 19TH day of MARCH, 1984, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, hereinafter called "State", and the City of Phoenix acting by and through its City Council hereinafter called "City".

WHEREAS, State is empowered by Section 28-108 Arizona Revised Statutes to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and the Director of the Arizona Department of Transportation has delegated to the undersigned the authority to execute same on behalf of the State; and

WHEREAS, City is empowered by Section 9-672 B Arizona Revised Statutes and Chapter II, Section 2 of the Phoenix City Charter to enter into this Agreement and acting by and through its City Council, has, by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute same on behalf of City; and

WHEREAS, State proposes to construct an underground drainage system for the purpose of carrying away surface water in the vicinity of the Interstate Highway 10 Inner Loop where said highway traverses that portion of the City of Phoenix lying between 15th Avenue on the West and 24th Street on the East and shall construct an East-West collector drain paralleling or underlying Culver Street between 15th Avenue and 24th Street connecting with two North-South drains, one of which will underlie portions of 2nd Street and Central Avenue; the other will underlie portions of 21st Street and 20th Street. Each of said North-South drains will discharge into the Salt River; one near the intersection of Central Avenue and the River; the other near the intersection of 20th Street and the River; and

WHEREAS, City has requested State to increase the carrying capacity of its proposed I-10 Inner Loop drainage system to accommodate the additional flows of existing City storm sewers between 7th Avenue and 16th Street and in addition to provide connections for planned future storm sewers in 20th Street, 12th Street and Central Avenue and the intersections of 2nd Street and Fillmore; 2nd Street and Grant; Central Avenue and Tonto and Central Avenue immediately north of the East-West portion of I-17; and

WHEREAS, the cost of increasing the capacity of said system to handle City storm sewer flows is estimated to be Seven Million Dollars (\$7,000,000) which City agrees to pay in the manner set forth below.

THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

STATE SHALL:

1. Increase the design capacity of the I-10 Inner Loop Drainage System as required to intercept and convey the flows of existing and future storm sewers as described above.

2. During construction provide the necessary connections between said Drainage System and existing storm sewers as described above and provide for connections to planned future storm sewers as described above. The City shall have the right to connect existing and future storm drainage systems at those locations stated in the fourth and fifth paragraphs of page one and as shown on the plans of the State.

3. Submit billings to City at 90-day intervals. Such billings shall constitute City's prorated share of actual construction costs incurred, based upon a comparison of Seven Million Dollars (\$7,000,000) with the future construction contract Agreement Estimate. The total amount of all billings to City shall not exceed Seven Million Dollars (\$7,000,000).

4. State agrees to reimburse City for actual cost of all labor and equipment required for reasonable inspection and monitoring of city-owned facilities, including, but not limited to streets, storm sewers, waterlines and sanitary sewers, which lie within the probable zone of influence of tunnel construction.

5. The State assumes full responsibility for the design, plans and specifications, and the engineering in connection therewith and the construction of the improvements contemplated by this Agreement, except the storm drainage systems of the City. It is understood and agreed that the City's financial participation in relation to the construction of this project is confined solely to the amount stated in Paragraph 3 in regard to participating with the funding of this project. Any damages arising from the construction of this project, except with respect to the City storm drainage systems or any modifications thereof, shall be solely the liability of the State and the State agrees to save and hold harmless and indemnify from loss the City, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any other person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provision of this Agreement by the State, any of its departments, agencies, officers and employees in carrying out the provisions of this Agreement. Costs incurred by the City, any of its departments, agencies, officers or employees shall include, in the event of any action, court costs, expenses of litigation or attorney's fees. State will require the construction manager and the contractor to carry general liability insurance in the amount of Twenty-Five Million Dollars (\$25,000,000) throughout the course of construction of the project, naming thereon as additional named insureds, the State, its departments, agencies, agents and employees and the City. The contractor and construction manager's coverage shall be primary for any and all losses arising out of the course of construction of the project.

CITY SHALL:

1. By separate action grant an easement to State for construction and maintenance of said underground drainage system within the public right of way; provided, however, said easement shall be subject to use of the public right of way for transportation and governmental purposes. The City shall convey whatever title it has as to any such right of ways. In granting such easement to the State the City is conveying to the State such interest as it may have in the public right of way for use by the State for an underground drainage system.

2. Pay to the State the amount due on each 90-day billing; provided that City's total contributions do not exceed Seven Million Dollars (\$7,000,000).

3. In the event it is unable to pay the full amount due within thirty (30) days after the due date, pay to State a ten percent (10%) per annum charge on any unpaid amount.

4. Pay all costs of connecting to said underground drainage systems not included in the plans and specification for this project.

5. In no manner place a burden upon the drainage system to which this Agreement relates which is greater than it was designed to accommodate and the City shall place only surface storm drainage waters into the said drainage system in the volumes and at the locations indicated on the plans. The City shall not place deleterious, hazardous or toxic substances of any nature into the said storm drainage system.

6. In affirmatively exercising any of its rights to connect to the State's underground drainage system and in exercising its right to use and enjoy the benefits of that system under and by virtue of this Agreement, to be solely liable to the State and the City agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any other person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provision of this Agreement by the City, any of its departments, agencies, officers and employees in connecting to the State's underground drainage system and in exercising its right to use and enjoy the benefits of that system. Costs incurred by the State, any of its departments, agencies, officers, or employees shall include in the event of any action, court costs, expenses of litigation and attorney's fees.

This Agreement shall remain in full force and effect until completion of said construction project as aforesaid; provided, however, that this Agreement may be cancelled at any time prior to the commencement of construction upon 30 days' written notice to the other party; provided, however, provisions herein relating to maintenance, connecting to or use of the State's underground drainage system shall be in perpetuity.

All parties hereto acknowledge that this Agreement is subject to cancellation by the Governor pursuant to the provisions of Section 38-511 Arizona Revised Statutes.

In the event of any controversy which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Section 12-1518(B) and (C) of Arizona Revised Statutes as amended.

This Agreement shall become effective on the date of filing same with the Secretary of State.

Attached hereto and incorporated herein by reference is a copy of State's resolution authorizing entry into this Agreement, a copy of City's Resolution passed by its City Council, a copy of the written determination of the appropriate attorney that City is authorized under the laws of this State to enter into this Agreement and that said Agreement is in proper form, and a copy of the Attorney General's Intergovernmental Agreement Determination.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF PHOENIX

MAR 15 1984

MARVIN A. ANDREWS

BY: CITY MANAGER

BY: *[Signature]*
Title: CITY ENGINEER

STATE OF ARIZONA

DEPARTMENT OF TRANSPORTATION

BY:

[Signature]
W. O. FORD
Acting State Engineer

ATTEST:

[Signature]
City Clerk

RESOLUTION NO. 16243

A RESOLUTION OF INTENT TO PARTICIPATE WITH
THE ARIZONA DEPARTMENT OF TRANSPORTATION IN
THE COST OF THE DRAINAGE SYSTEM FOR PAPAGO
FREEWAY INNER LOOP; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PHOENIX,
as follows:

SECTION 1. That the City Manager be, and he is hereby,
authorized to enter into a participation agreement with the
Arizona Department of Transportation to share the cost of the
drainage system of the Papago Freeway Inner Loop on the basis of
benefits derived.

SECTION 2. WHEREAS, the immediate operation of the
provisions of this Resolution is necessary for the preservation
of the public peace, health, and safety, an EMERGENCY is hereby
declared to exist, and this Resolution shall be in full force and
effect from and after its passage by the Council as required by
the City Charter, and is hereby exempted from the referendum
clause of said Charter.

PASSED by the Council of the City of Phoenix, this
27 day of SEPTEMBER, 1983.

MARGARET T. HANCE
M A Y O R

ATTEST:

DONNA CULBERTSON City Clerk

APPROVED AS TO FORM:

RON P. MARSHALL ^{ACTING}
City Attorney

REVIEWED BY:

PETER F. STARRETT City Manager

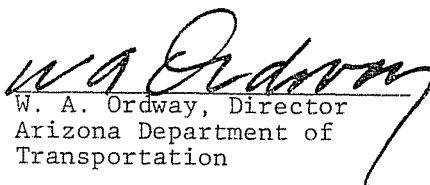
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9/23/83

PROJECT: EAC-I-10-3(190)
SECTION: INNER LOOP DRAINAGE TUNNELS

RESOLUTION

BE IT RESOLVED on this 5th day of DECEMBER, 1983,
that I, W. A. Ordway, as Director, ARIZONA DEPARTMENT OF
TRANSPORTATION, have determined that it is in the best interests
of the State of Arizona that the DEPARTMENT OF TRANSPORTATION,
acting by and through the Highways Division, enter into an
Intergovernmental Agreement with the City of Phoenix for the
purpose of constructing an underground drainage system to remove
surface water in the vicinity of Interstate 10 beginning in the
area of 15th Avenue on the West and extending to 24th Street on
the East and for accommodating certain flowage from City of
Phoenix storm drains.

Therefore, authorization is hereby given to draft said Agreement
which, upon completion, shall be submitted for approval and
execution by the Chief Deputy State Engineer.


W. A. Ordway, Director
Arizona Department of
Transportation

APPROVED AS TO FORM and within the power
and authority granted under the laws of the State
of Arizona to the City of Phoenix.


ACTING City Attorney



OFFICE OF THE
Attorney General
TRANSPORTATION DIVISION
1275 WEST WASHINGTON
PHOENIX, ARIZONA 85007
(602) 255-1680

ROBERT K. CORBIN
ATTORNEY GENERAL

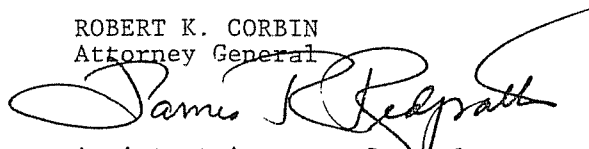
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A. G. Contract No. 84-129, which is an agreement between public agencies, has been reviewed pursuant to A.R.S. Sec. 11-952, as amended, by the undersigned Assistant Attorney General Who has determined that it is in the proper form and is within the powers and authority granted to the State or its agencies under the laws of the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies to enter into said agreement.

Dated this 19th day of March, 1984.

ROBERT K. CORBIN
Attorney General


Assistant Attorney General
Transportation Division

ORDINANCE NO. S 14768

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE STATE OF ARIZONA PROVIDING FOR THE CONSTRUCTION OF THE INNER LOOP DRAINAGE TUNNELS, AUTHORIZING THE DISBURSEMENT OF THE CITY'S SHARE OF THE NECESSARY FUNDS FOR THE PROJECT, AUTHORIZING PUBLIC RIGHTS OF WAY TO BE USED FOR THE PURPOSE OF SUCH DRAINAGE TUNNELS; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX
as follows:

SECTION 1. That the City Manager or his designee is authorized to enter into an agreement with the State of Arizona, acting through the Department of Transportation, providing for the construction of the Papago I-10 Freeway Inner Loop Drainage Tunnels, Index No. ST-840767(D-7 and D-8) and the City's contribution to the construction of said underground drainage system in an amount not to exceed Seven Million Dollars (\$7,000,000).

SECTION 2. That the City Controller is authorized to disburse the necessary funds pursuant to the terms of the agreement. The total funds disbursed by the City shall not exceed Seven Million Dollars (\$7,000,000).

SECTION 3. That the City Manager is authorized to issue an easement to the State of Arizona for the construction and maintenance of said underground drainage system within the public right of way; provided, however, said easement shall be subject to the use of the public right of way for transportation and governmental purposes. The public right of way in the below described streets is hereby authorized to be used by the State of Arizona for the purpose of constructing and maintaining an underground drainage system for the purpose of carrying away surface water in the vicinity of the Interstate Highway 10 Inner Loop where said highway traverses the portion of the City of Phoenix between 15th Avenue on the west and 24th Street on the east.

Description of Public Streets

21' DIAMETER TUNNEL - WEST TUNNEL

Beginning at the intersection of Culver Street and Second Street, then south along Second Street to its intersection with Grant Street. Then curving southwesterly to the intersection of Central Avenue and Tonto. Then south along the center line of Central Avenue to the north bank of the Salt River.

21' DIAMETER TUNNEL - EAST TUNNEL

Beginning at Moreland Street midway between 21st Street and 21st Place, then southerly to the intersection of 21st Street and Van Buren, then south along the center line of 21st Street to the intersection of 21st Street and Mohave Street. Then curving southwesterly through the intersection of 20th Street and University Drive. Then south to the north bank of the Salt River.


NORTH TUNNEL

Beginning at the intersection of Culver Street and 7th Avenue. Then easterly along Culver Street to Second Street. Then curving northeasterly to the intersection of the alley north of Culver Street and 5th Street. Then curving southeasterly to a point just west of the intersection of Culver Street and Tenth Street.


SECTION 4. WHEREAS, the immediate operation of the provisions of this ordinance is necessary for the preservation of the public peace, health and safety, an EMERGENCY is hereby declared to exist, and this ordinance shall be in full force and effect from and after its passage by the Council as required by the City Charter, and is hereby exempted from the referendum clause of said Charter.

PASSED by the Council of the City of Phoenix this

14 day of MARCH, 1984.

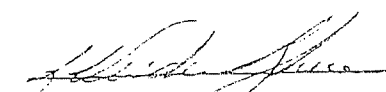

MAYOR

ATTEST:

 City Clerk

APPROVED AS TO FORM:

ACTING

 City Attorney

REVIEWED BY:

ASSISTANT

 City Manager

JWS:kf
3/13/84